

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Manolo Gaud, Concepcion Gaud,
Plaintiffs,

Civil Action No. 6:06-3574-GRA-BHH

REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE

vs.

Havana Tropical Café, Julio Torres,
Defendants.

Pro se defendant Julio Torres has made a "motion to deny charges." [Doc. 25.] That motion is not cognizable in this Court. Even were the motion to be interpreted as a motion to dismiss or for summary judgment, defendant Torres has made no effort whatsoever to meet his burden under either Fed. R. Civ. P. 12 or 56 to demonstrate that dismissal of the plaintiff's claims is warranted. It is hereby recommended that the motion be DENIED. To the extent the district court determines that the motion is simply an Answer to the Complaint, then Document 25 should be re-docketed as such.

s/Bruce H. Hendricks
United States Magistrate Judge

August 24, 2007
Greenville, South Carolina

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 10768
Greenville, South Carolina 29603

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

